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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL CATALDO,
JULIAN SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,
v.

GOOGLE LLC,
Defendant.

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Case No. 3:20-cv-04688-RS

**NOTICE OF PLAINTIFFS' REQUEST
FOR RECONSIDERATION OF THIRD-
PARTY APP DEVELOPERS JURY
INSTRUCTION**

The Honorable Richard Seeborg
Courtroom 3 – 17th Floor

CASE NO. 3:20-cv-04688-RS

NOTICE OF PLAINTIFFS' REQUEST FOR RECONSIDERATION OF
THIRD-PARTY APP DEVELOPERS JURY INSTRUCTION

1 Plaintiffs ask the Court, upon hearing Google's closing, to reconsider giving the Plaintiffs'
 2 previously proposed "Third-Party App Developers Instruction, if Google (1) argues that Google's
 3 Firebase Terms of Service with Third-Party App Developers (at GO-933) is a basis for the jury to
 4 conclude that Plaintiffs gave permission or consent for Google to collect, save, and copy their third-
 5 party app activity data; or (2) overemphasizes those terms.

6 As the Court noted in its MIL Order:

7 Defendant may introduce evidence that it required app developers to reveal their use
 8 of Google Analytics in attempting to rebut the argument that it acted in a highly
 9 offensive manner but not as part of the chain of consent. It has conceded that no
 10 third-party app disclosure to users discussed WAA or (s)WAA, so such disclosures
 11 necessarily do not speak to whether Plaintiffs consented to WAA-off or (s)WAA-off
 12 collection by agreeing to them. Relatedly, Plaintiffs may not argue that Google failed
 13 to obtain the necessary consent by pointing to the dearth of evidence about third-
 14 party app compliance with Google's policies. The consent question in this case
 revolves around the relationship between Google and Plaintiffs, not the apps and
 Plaintiffs nor Google and the apps. Were Google's disclosures to Plaintiffs unclear
 such that it was objectively reasonable for Plaintiffs to expect that turning WAA or
 (s)WAA off would stop Google from collecting their data through third-party apps
 that used Google Analytics and/or GA4F? The jury will decide.

15 *See* Dkt. 587 at 6–7. Plaintiffs fully complied with the Court's order.

16 The Court also emphasized this point throughout trial:

17 MR. DAVID BOIES: The witness just testified that the reason for putting paragraph
 18 7 -- or Section 7 into the agreement with app developers was to ensure that the users
 19 understood what was being collected. That is exactly what the Court has said they
 are not permitted to do. This is not about consent.

20 THE COURT: Well, it's going to be clear in the jury instructions that consent vis-à-
 21 vis the third-party apps is not a defense. So to the extent that you think that
 22 suggestion has been made, it will be clear that that's not the defense in this case, and
 23 that's what we discussed at great length. What is your reason for going into this?
 Because you agree that I've said quite clearly --

24 MR. SANTACANA: Yes.

25 THE COURT: -- that's out.

26 *See, e.g.*, Trial Tr. 1150:22–1151:11.

27 Given that the Court did not include the Plaintiffs' proposed Third-Party App Developers
 28 Instruction in the final jury instruction, the Plaintiffs seek to ensure that Google does not attempt to

1 confuse the jury by arguing in closing that those terms support a finding that Google obtained
 2 permission or consent to collect, save, and copy Plaintiffs' sWAA-off data. The same is true if
 3 Google over emphasizes these agreements during closing.

4 Plaintiffs provided a draft proposed Third-Party App Developers Instruction that uses
 5 language that tracks this Court's order and instructs the jury on what Google's Firebase Terms of
 6 Service with Third Party App Developers is not relevant to (permission or consent) *as well as* what
 7 they are relevant to (highly offensive). *See* Ex. A.

8 CONCLUSION

9 For the reasons above, upon hearing Google's closing, the Court should reconsider giving
 10 the Plaintiffs' proposed "Third Party Apps" instruction if Google (1) argues that Google's Terms
 11 of Service with Third Party Apps is a basis for the jury to conclude that Plaintiffs gave permission
 12 or consent for Google to collect, save, and copy their third-party app activity data; or (2)
 13 overemphasizes Google's Terms of Service with Third Party Apps Developers.

14 DATED: September 2, 2025

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